

**ORDINANCE AMENDING CHAPTER 19 OF THE CODE OF ORDINANCES OF THE
CITY OF ROCKY MOUNT TO ADOPT A YOUTH PROTECTION ORDINANCE FOR
THE PURPOSE OF REDUCING JUVENILE VIOLENCE AND CRIME AND
PROMOTING THE SAFETY AND WELL BEING OF ALL CITIZENS**

(Recitals as to the need for the ordinance to be included after public hearing)

BE IT ORDAINED by the City Council of the City of Rocky Mount, North Carolina, that Chapter 19 of the Code of Ordinances of the City of Rocky Mount is amended to add a new Article VI, entitled “Youth Protection Ordinance”, which shall read as follows:

ARTICLE VI. YOUTH PROTECTION ORDINANCE

Sec. 120. Purpose.

The purpose of the Youth Protection Ordinance is:

- (1) To promote the general welfare and protect all citizens and residents through the reduction of juvenile violence and crime within the City;
- (2) To protect the safety and well being of the City’s youngest residents, persons under the age of sixteen (16), whose inexperience renders them particularly vulnerable to becoming participants in unlawful activities, particularly unlawful drug activities, and to being victimized by older perpetrators of crime; and
- (3) To supplement and enhance parental authority and strengthen the fundamental right of all parents to raise their children as law abiding citizens in the manner they see fit.

Sec. 121. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Direct route means the shortest reasonable path of travel or a commonly used route to reach a final destination without any detour or stop along the way.

Emergency means an unforeseen circumstance, or combination of circumstances, or the status or condition resulting therefrom, requiring immediate action to safeguard life, limb, or property. The term includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or death. This term also includes any action that is reasonably necessary in order to respond to a medical need requiring immediate attention of a family member of a juvenile, regardless of whether the juvenile’s action

is taken in order to prevent death or serious bodily injury.

Establishment means any privately owned place of business within the city operated for profit to which the public has access or is invited, including, but not limited to, any place of amusement or entertainment.

Guardian means a person who is court appointed to be the guardian of a juvenile.

Juvenile means any person under the age of sixteen (16) years.

Owner/operator means any individual, firm, association, partnership, limited liability company, or corporation operating, managing or conducting any establishment, including the employees, members or partners of an association, partnership, or limited liability company and the officers of a corporation.

Parent means a person who is a biological parent, adoptive parent, foster parent, stepparent, or to any other person to whom legal custody has been given by court order.

Public place means any place that is generally open to and used by the public or a substantial group of the public, whether it be publicly or privately owned, including, but not limited to, streets, sidewalks, highways, alleys, rights-of-way, public vehicular areas and parking lots, transportation facilities, theaters, restaurants, shops, bowling alleys, schools and school grounds, places of business and amusement, playgrounds, parks, the common areas of apartment buildings, housing authority developments, and office buildings, and other common areas open to or accessible to the public.

Remain means to linger or stay in a public place, to fail to leave a public place when requested to do so by a police officer, or to fail to leave the premises of an establishment when requested to do so by the owner/operator or an employee of the establishment.

Restricted hours. The time of night referred to in this article is based upon the prevailing standard of time, whether Eastern Standard Time or Eastern Daylight Saving Time, observed at that hour by the public in the city. *Restricted hours* means:

- (1) On any Sunday, Monday, Tuesday, Wednesday, or Thursday, 11:00 p.m. until 6:00 a.m. of the following day; and
- (2) On any Friday, Saturday, or Sunday, 12:01 a.m. until 6:00 a.m.

Sec. 122. Offenses.

Except as provided by section 123, the following offenses constitute a violation of this article:

- (1) A juvenile commits an offense by being present in or remaining in any public place or on the premises of any establishment within the city during the restricted hours.
- (2) A parent or guardian of a juvenile commits an offense if he or she knowingly permits, or by lack of parental control, allows the juvenile to remain in any public place or on the premises of any establishment within the city during the restricted hours. The term “knowingly” includes knowledge that a parent or guardian should reasonably be expected to have concerning the whereabouts of a juvenile in that parent or guardian’s legal custody. This requirement is intended to hold a parent or guardian to a reasonable community standard of parental responsibility through an objective test: whether a reasonably responsible parent or guardian in the same or similar situation should have known that the juvenile was in a public place or on the premises of an establishment

during the restricted hours. It shall be no defense that a parent or guardian was indifferent to the activities or conduct or whereabouts of such juvenile.

(3) The owner, operator, or any employee of an establishment commits an offense if he knowingly allows a juvenile to remain upon the premises of the establishment during the restricted hours. The term “knowingly” includes knowledge that an operator or employer should reasonably be expected to have concerning the patrons of an establishment. The standard for “knowingly” shall be applied through an objective test: whether a reasonable person in the operator’s or employee’s position should have known that the patron was a juvenile in violation of this article.

(4) It shall be a violation of this article for any person sixteen (16) years of age or older to aid or abet a juvenile in the violation of subsection (1) of this section.

(5) It shall be a violation of this article for a parent or guardian of a juvenile to refuse to take custody of the juvenile during the restricted hours.

Sec. 123. Exceptions.

A juvenile who is in a public place or establishment during the restricted hours shall not be in violation of this article if the juvenile is:

(1) Accompanied by his or her parent or guardian.

(2) Accompanied by an adult eighteen (18) years of age or older authorized by the parent or guardian of such juvenile to take the parent’s or guardian’s place in accompanying the juvenile for a designated period of time and purpose within a specified area.

(3) On an errand, using a direct route, at the direction of, and with a written statement from, the juvenile’s parent or guardian until the hour of 12:30 a.m.

(4) In a motor vehicle with parental consent engaged in interstate travel through the city or originating or terminating in the city.

(5) Traveling in a motor vehicle with a parent or guardian, or traveling in a motor vehicle with an adult eighteen (18) years of age or older authorized by the parent or guardian of such juvenile to take the parent’s or guardian’s place in accompanying the juvenile for a designated period of time and purpose within a specified area.

(6) Engaged in a lawful employment activity, or using a direct route to or from a place of employment.

(7) Reacting or responding to an emergency.

(8) Attending or traveling to or from, by direct route, an official school, religious, or recreational activity that is supervised by adults and sponsored by a public or private school, the city or other governmental entity, a civic organization, or another similar

entity that accepts responsibility for the juvenile.

(9) Exercising First Amendment rights protected by the United States Constitution such as the free exercise of religion, freedom of speech, and the right of assembly.

(10) Married or emancipated.

Sec. 124. Defense.

An owner, operator, or employee of an establishment shall not be in violation of section 122(3) of this article if he or she promptly notified the police department that a juvenile was present on the premises of the establishment during the restricted hours and refused to leave.

Sec. 125. Enforcement.

(a) Before taking any enforcement action under this article, a police officer shall conduct a reasonable investigation to determine whether a juvenile in apparent violation of this article is shielded by one or more of the exceptions provided in section 123.

(b) The officer shall have an affirmative duty not to prepare a juvenile arrest report, issue a citation, or make an arrest under this article unless the officer reasonably believes, after due inquiry, that an offense has occurred and that, based on any response and other circumstances, no exception or defense in this article is available to the juvenile.

Sec. 126. Procedures.

(1) Confronting potential violators of this article. Upon observing a juvenile who is in apparent violation of this article, an officer should take the following steps:

(a) Request the juvenile's name, age, date of birth and address and, if necessary, provide the telecommunicator with the location of the potential violation, the number of persons involved and their identity or physical description.

(b) Should the individual be in violation of this article, ascertain why the youth is out, where he or she has been and where he or she is going.

(c) Inform the individual that he or she is in violation of this article.

(d) Determine from communications whether the individual has outstanding warrants and, if possible, whether he or she has been previously cited for a violation of this article.

(e) If the individual has two (2) prior violations of this article, particular consideration should be given to arrest as an alternative within the guidelines of this article.

(f) In all cases where a violation of this article has been identified, the officer shall complete the appropriate departmental record of the violation.

(2) Enforcement Options. When a violation of this article has been identified, an officer may use reasonable discretion in determining an appropriate course of action. These options include directing the juvenile to proceed directly home, transporting the juvenile home, or arresting and detaining the juvenile until his or her parents or guardian can be reached for pickup.

(a) Directing a violator to proceed directly home is normally warranted for:

(i) first offenses;

(ii) when the circumstances of the violation suggest a reasonable attempt on the part of the juvenile to conform with this article; or

(iii) when the officer feels that the individual will proceed home as directed.

(b) If directed to proceed directly home, the officer shall present a copy of the violation to the youth and provide counseling on the purpose and intent of this article and the potential police response to future violations.

(c) Transporting the juvenile home is normally warranted when:

(i) the juvenile has more than one (1) violation of this article;

(ii) when there are indications that the juvenile has purposely ignored the provisions of this article;

(iii) when the officer has a reasonable suspicion, based on statements made or conduct observed, that the juvenile will not proceed home;

(iv) when the officer believes, after reasonable inquiry, that it is in the best interest of the juvenile that the officer make personal contact with the youth's parents or guardian; or

(d) When the juvenile is transported home, the parent or guardian should be contacted, informed of the specific circumstances of the violation, the nature and purpose of the law and potential consequences of future violations. A copy of the violation should be served on the parent or guardian, who should sign the original. Unwillingness of the parent or guardian to sign shall be noted on the violation or warning notice.

(e) Arrest of a juvenile for violation of this article should normally be made only

after the juvenile has two (2) or more prior violations or when:

- (i) the officer has knowledge of the juvenile's past delinquent or criminal history that demonstrates a pattern of disregard for the law,
- (ii) the circumstances of the offense, such as the time and location of the violation, provides reasonable suspicion of intent to commit additional delinquent or criminal acts,
- (iii) the whereabouts of the parent or guardian cannot be determined in the exercise of reasonable diligence, or there are reasonable grounds to believe that the parent or guardian cannot provide supervision or control of the juvenile, or
- (iv) the officer reasonably determines that no other appropriate options are available.

(f) In all arrests, officers should clearly specify the basis for their arrest decision.

(g) When a juvenile is arrested, he or she shall be transported to the appropriate holding area where his or her parent or guardian will be contacted as soon as possible for pickup. Such detention shall conform to the city's policy on legal detention of juveniles in terms of length, location of detention and nature of security used. The parent or guardian shall be provided the same information and notice of violation as provided in this article.

Sec. 127. Penalties.

(a) Any juvenile who violates any section of this article is subject to being adjudicated delinquent. The court may, in its discretion, impose any dispositional alternatives that are authorized by the North Carolina Juvenile Code for any juvenile who is delinquent.

(b) Any person other than a juvenile who violates, any section of this article shall be guilty of a misdemeanor and shall be subject to a fine not to exceed \$500.00 and imprisonment in the discretion of the court in accordance with N.C. Gen. Stat. § 14-4.

(c) In addition to any other penalty provided by this section, the parent or guardian having custody of a juvenile shall be liable and responsible for all costs incurred by the city for providing personnel to remain in the company of the juvenile who has been detained as a result of violation of this article when the parent or guardian does not pick up the juvenile within one (1) hour after receiving notice in person or by telephone that the city is detaining the juvenile for a violation of this article. The amount owed by the parent or guardian shall be based on the hourly wage of the city employee who is assigned to remain with the

juvenile, plus the costs of the benefits for that employee. The city may collect the amounts due by any manner provided by law, including initiation of litigation to recover such amounts due and owing, plus reasonable attorneys fees and costs incurred.

All ordinances or clauses of ordinances in conflict with this article are hereby repealed.

This ordinance is effective on and after the _____ day of _____, 2008

INTRODUCED: _____

ADOPTED: _____